

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE STATE PUBLIC DEFENDER  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULES I through VI pertaining to the ) PROPOSED ADOPTION  
Office of the State Public Defender )

TO: All Concerned Persons

1. On September 27, 2006, at 1:00 p.m., a public hearing will be held in Room 160 of the Mitchell Building, 125 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the State Public Defender no later than 5:00 p.m. on September 20, 2006, to advise us of the nature of the accommodation that you need. Please contact Cathy Doyle, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; telephone (406) 496-6080; facsimile (406) 496-6098; e-mail to <mailto:cmdoyle@mt.gov>.

3. The proposed new rules provide as follows:

RULE I ORGANIZATION OF THE STATEWIDE PUBLIC DEFENDER SYSTEM (1) The organization and function of the statewide public defender system are described in this rule.

(a) History. The statewide public defender system was established by Chapter 449, Laws of Montana, 2005. The system is provided for in 47-1-104, MCA.

(b) Structure. The statewide system consists of the following:

(i) the Montana Public Defender Commission, comprised of eleven members appointed by the Governor. The commission is allocated to the Department of Administration for administrative purposes (2-15-1028, MCA);

(ii) the Office of the State Public Defender;

(iii) eleven regional offices; and

(iv) the Appellate Defender.

(2) Functions.

(a) Commission. The commission supervises the operations of the Chief Public Defender and the Office of the State Public Defender, as required by 47-1-105, MCA.

(b) Chief Public Defender. The Chief Public Defender administers the Office of the State Public Defender as required by 47-1-201 and 47-1-202, MCA.

(3) Contact Information.

(a) Montana Public Defender Commission and Office of the State Public Defender, 44 West Park Street, Butte, MT 59701, telephone (406) 496-6080;

(b) Kalispell Regional Public Defender Office, 100 Financial Drive, Kalispell, MT 59901, telephone (406) 751-6080;

(c) Missoula Regional Public Defender Office, 610 Woody, Missoula, MT 59802, telephone (406) 523-5140;

(d) Great Falls Regional Public Defender Office, 415 2nd Avenue North #110, Great Falls, MT 59401, telephone (406) 454-6858;

(e) Helena Regional Public Defender Office, 111 N. Last Chance Gulch, #4C, Helena, MT 59601, telephone (406) 444-0104;

(f) Butte Regional Public Defender Office, P.O. Box 122, 118 Cherry St., Anaconda, MT 59711, telephone (406) 563-6586;

(g) Havre Regional Public Defender Office, 415 4th Avenue, P.O. Box 268, Havre, MT 59501, telephone (406) 265-4373;

(h) Lewistown Regional Public Defender Office, 505 West Main St., Ste. 418, Lewistown, MT 59457, telephone (406) 535-3703;

(i) Bozeman Regional Public Defender Office, 502 South 19th, Ste. 211, Bozeman, MT 59718, telephone (406) 582-2450;

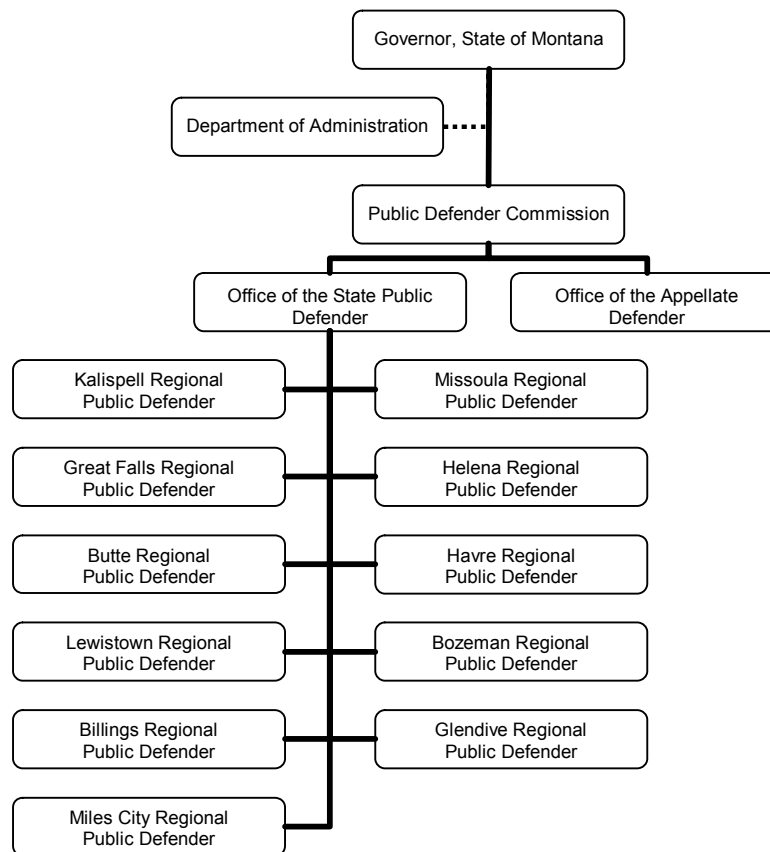
(j) Billings Regional Public Defender Office, 207 North Broadway, Ste. 201, P.O. Box 459, Billings, MT 59101, telephone (406) 256-6861;

(k) Glendive Regional Public Defender Office, 100½ South Merrill, Ste. 3, Glendive, MT 59330, telephone (406) 377-3113;

(l) Miles City Regional Public Defender Office, 11 South 7th Street, Miles City, MT 59301, telephone (406) 234-1702; and

(m) Office of Appellate Defender, 301 S. Park, Helena, MT 59601, telephone (406) 841-2001.

(4) Organization Chart.



AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASONABLE NECESSITY: The agency is proposing New Rule I to provide an overview of its organization, governance, and to set out contact information.

**RULE II PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING AGENCY RULES** (1) The Public Defender Commission, for purposes of establishing agency rulemaking procedures, adopts and incorporates by reference Attorney General's Model Procedural Rules 1 found in ARM 1.3.102 and 2 through 7 found in ARM 1.3.205 through 1.3.210. A copy of the Attorney General's Model Rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASONABLE NECESSITY: The agency is proposing New Rule II to notify the general public how the commission will adopt new rules or amend and/or repeal previously adopted rules.

RULE III PROCEDURES FOR THE ISSUANCE OF DECLARATORY

RULINGS (1) The Public Defender Commission adopts and incorporates by reference Attorney General's Model Procedural Rules 22 through 24 and 28 found in ARM 1.3.227 through 1.3.229 and 1.3.233 which set forth the procedures for the issuance of declaratory rulings. A copy of the Model Rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

REASONABLE NECESSITY: The agency is proposing New Rule III to notify the general public of procedures for the issuance of declaratory rulings.

RULE IV DEFINITIONS (1) "Applicant" means a person who seeks public defender services.

(2) "Regional office" means an office authorized under 47-1-104(2), MCA.

AUTH: 47-1-105, MCA

IMP: 47-1-105, 47-1-111, 47-1-216, MCA

REASONABLE NECESSITY: The agency is proposing New Rule IV to define terms as they are used in these rules.

RULE V DETERMINATION OF INDIGENCY (1) The office shall prepare forms to capture financial information from an applicant for public defender services.

(2) The office shall distribute the forms to courthouses, jails, and other venues determined appropriate by the office.

(3) The applicant will complete the forms in accordance with instructions provided on the forms and forward them to the appropriate regional office.

(4) The staff of the regional office shall review an applicant's forms and determine whether, based on the provisions of 47-1-111, MCA, an applicant is indigent and qualifies for public defender services. The applicant will be notified of this determination, regardless of outcome.

(5) All information collected on the forms shall be treated as confidential except when judicial review of the determination is requested. At that time, the forms shall be submitted to the court for camera inspection.

AUTH: 47-1-105, 47-1-111, MCA

IMP: 47-1-105, 47-1-111, MCA

REASONABLE NECESSITY: The agency is proposing New Rule V to notify the general public about how the agency will capture information from individuals applying for public defender services, how the review of this information will be accomplished by the agency, and how the individual will be notified about whether or not that individual qualifies for services which are based upon the individual's financial means.

RULE VI REASONABLE COMPENSATION (1) The commission shall meet at least biannually to review and approve the compensation rates based on criteria the commission deems appropriate.

(2) The commission shall determine appropriate compensation rates for:

(a) contract attorneys; and

(b) others who provide services related to the provision of public defender services.

(3) Any contracts for attorney or related services shall use these approved rates of compensation.

AUTH: 47-1-105, 47-1-216, MCA

IMP: 47-1-105, 47-1-216, MCA

REASONABLE NECESSITY: The agency is proposing New Rule VI to inform the general public as to how the agency will set rates for certain services provided to the agency.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Lawrence A. Murphy, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; faxed to the office at (406) 496-6098; or e-mailed to <mailto:lamurphy@mt.gov>, and must be received no later than 5:00 p.m., October 5, 2006.

5. Lawrence A. Murphy, Contract Manager, Office of the State Public Defender, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's site on the World Wide Web at <http://publicdefender.mt.gov/>, under "Administrative Rule Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Office of the State Public Defender maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this office. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Office of the State Public Defender rulemaking actions. Such written requests may be mailed

or delivered to Lawrence A. Murphy, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; faxed to the office at (406) 496-6098; e-mailed to <mailto:lamurphy@mt.gov>; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BY: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

BY: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

BY: /s/ James Park Taylor  
James Park Taylor, Chair  
Montana Public Defender Commission

Certified to the Secretary of State August 28, 2006.